

In the Matter of License No. 265222 and all other Seaman Documents
Issued to: ELLIOTT W. GREEN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1272

ELLIOTT W. GREEN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 1 November 1960, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as Third Assistant Engineer on board the United States SS LUCILLE BLOOMFIELD under authority of the license above described, on or about 11 August 1960, Appellant failed to perform his duties and wrongfully indulged in intoxicants while the ship was at Bremen, Germany.

At the hearing, Appellant acted as his own counsel. A plea of not guilty to the charge and each specification was entered on behalf of Appellant since he was not present on the first day of the hearing.

The Investigating Officer introduced in evidence the testimony of the ship's Chief Engineer and a certified copy of an entry in the Official Logbook concerning this incident.

Appellant testified in his defense. He stated that although the bottle was in his hand he had not has a drink because the cork was still in the bottle; the bottle was being opened for the electrician to have a drink; Appellant was not required to stand the 0800 to 1200 watch because he was on watch from 0400 to 0800 and 1200 to 1600 on this date; he told the Chief Engineer that Appellant did not want to work overtime on the 0800 to 1200 watch.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of twelve months. This included a prior order of six months suspension imposed on 3 November 1959 which had been placed on probation for twenty-four months.

FINDINGS OF FACT

On 11 August 1960, Appellant was serving as Third Assistant Engineer on board the United States SS LUCILLE BLOOMFIELD and acting under authority of his license, Appellant had the

0400 to 0800 sea watch approaching Bremen and was scheduled to have the 0800 to 1200 or 0800 to 1600 port watch. The ship was docked at 0600.

At 0805, Appellant was relieved for breakfast. He ate a sandwich and went to the room of one of the crew members. The Chief Engineer found him there was a bottle of whiskey, or some other intoxicant, held to his mouth. Since Appellant appeared to be dopey, from drinking, the Chief Engineer did not permit Appellant to resume his watch until about 1130 when he seemed to be all right after sleeping for two hours.

Appellant's prior record consists of suspensions in 1956 and 1957 for various offenses including intoxication as well as the referred to probationary suspension in 1959 for absence from his duties.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant reiterates his testimony at the hearing stating that Federal law (46 U.S.C. 673) limits the required working time in port to eight hours a day unless there is an emergency.

Appellant claims that he not know what was in the unopened bottle but the electrician had asked for a "drink". Appellant might have appeared to be dopey because he had a severe cold during most of the voyage.

Other witnesses can verify Appellant's statements. There was no opportunity to cross-examine the Chief Engineer.

OPINION

As a matter of credibility, the Examiner accepted the testimony of the Chief Engineer that Appellant was drinking out of a bottle and that he seemed to be dopey. Appellant states that the bottle had been taken out of a suitcase y another crew member because someone asked for a "drink". This is sufficient evidence on which to base a reasonable conclusion that there was an intoxicant in the bottle and that Appellant drank some of it.

Appellant is substantially correct in stating that the law did not require him to work more than eight hours on 11 August. But is clear from his statements (at 0805 he " asked permission to eat" (R.10) and he makes reference on appeal to "being relieved for meals") that Appellant was supposed to stand the 0800 to 1200 watch as the Chief Engineer had testified. Until this watch was completed by him, he would not have been on watch for eight hours.

The exact extent to which Appellant was affected by the liquor is not important. The Chief Engineer was justified in not allowing Appellant to return to his watch immediately after he had been seen drinking an intoxicant and was in a sluggish condition which was not noticeable three hours later. This change casts considerable doubt upon the contention that Appellant might have appeared dopey because he had a severe cold. Hence, Appellant's failure to complete the balance of the watch

after breakfast was an offense because it was the result of his apparent inability, due to drinking, to take charge of the engine room watch.

Appellant lost the opportunity to cross-examine the Chief Engineer because Appellant was not present on the first day of the hearing and he did not contact anyone in the Coast Guard to explain his absence. Subsequently, the Chief Engineer was not available to recall for cross-examination. Any prejudice to Appellant because of this was his own fault. Also, Appellant was informed of his right to produce witnesses but he did not do so.

The order is not considered to be excessive in view of Appellant's prior record of similar and other offenses.

ORDER

The order of the Examiner dated ant New Orleans, Louisiana, on 1 November 1960, is AFFIRMED.

J. A. Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington,D. C , this 14th day of November 1961.